



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 906

[Doc. No. AMS-FV-14-0054; FV14-906-3 IR]

Oranges and Grapefruit Grown in Lower Rio Grande Valley in Texas; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule decreases the assessment rate established for the Texas Valley Citrus Committee (Committee) for the 2014-15 and subsequent fiscal periods from \$0.16 to \$0.11 per 7/10-bushel carton or equivalent of oranges and grapefruit handled. The Committee locally administers the marketing order, which regulates the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. Assessments upon orange and grapefruit handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period begins August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective August 15, 2014. Comments received by

October 14, 2014, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet: <http://www.regulations.gov>.

Comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Marketing Specialist or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (863) 324-3375, Fax: (863) 325-8793, or E-mail:

Doris.Jamieson@ams.usda.gov or
Christian.Nissen@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jeffrey.Smutny@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 906, as amended (7 CFR part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 12866, 13563, and 13175.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, orange and grapefruit handlers are subject to assessments. Funds to administer the order are derived

from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable oranges and grapefruit beginning August 1, 2014, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule decreases the assessment rate established for the Committee for the 2014-15 and subsequent fiscal periods from \$0.16 to \$0.11 per 7/10-bushel carton or equivalent of oranges and grapefruit handled.

The Texas orange and grapefruit marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program (7 CFR 906.34). The members of the Committee are producers and handlers of Texas oranges and grapefruit. They are familiar with the Committee's needs and the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2012-13 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on June 5, 2014, and recommended 2014-15 expenditures of \$809,500 and an assessment rate of \$0.11 per 7/10-bushel carton or equivalent of oranges and grapefruit handled. In comparison, last year's budgeted expenditures were \$1,353,300. The assessment rate of \$0.11

is \$0.05 lower than the rate currently in effect. The Committee reviewed and recommended 2014-15 expenditures of \$809,500, which includes a decrease in the marketing program and management fees. The Committee considered proposed expenses and recommended decreasing the assessment rate to more closely align assessment income to the lower budget.

The major expenditures recommended by the Committee for the 2014-15 year include \$503,000 for the Mexican fruit fly control program, \$175,000 for management and compliance, and \$100,000 for marketing and promotion. Budgeted expenses for these items in 2013-14 were \$503,000, \$200,000, and \$600,000, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Texas oranges and grapefruit. Orange and grapefruit shipments for the 2014-2015 year are estimated at 8.2 million 7/10-bushel cartons or equivalent, which should provide \$902,000 in assessment income. That is approximately \$92,500 above the anticipated expenses of \$809,500; therefore income derived from handler assessments will be adequate to cover budgeted expenses. Excess funds will be added to the reserve, (currently \$0.00), which will

be kept within the maximum permitted by the order (approximately one fiscal period's expenses as stated in § 906.35).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2014-15 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 170 producers of oranges and grapefruit in the production area and 13 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$7,000,000. (13 CFR 121.201)

According to Committee data and information from the National Agricultural Statistics Service, the weighted

average grower price for Texas citrus during the 2012-13 season was around \$12.98 per box and total shipments were near 8.5 million boxes. Using the weighted average price and shipment information, and assuming a normal distribution, the majority of growers would have annual receipts of less than \$750,000. In addition, based on available information, the majority of handlers have annual receipts of less than \$7,000,000 and could be considered small businesses under SBA's definition. Thus, the majority of producers and handlers of Texas citrus may be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2014-15 and subsequent fiscal periods from \$0.16 to \$0.11 per 7/10-bushel carton or equivalent of Texas citrus. The Committee recommended 2014-15 expenditures of \$809,500 and an assessment rate of \$0.11 per 7/10-bushel carton or equivalent handled. The assessment rate of \$0.11 is \$0.05 lower than the 2013-14 rate. The quantity of assessable oranges and grapefruit for the 2014-15 fiscal period is estimated at 8.2 million 7/10-bushel cartons. Thus, the \$0.11 rate should provide \$902,000 in assessment income and be adequate to meet this year's expenses.

The major expenditures recommended by the Committee for the 2014-15 year include \$503,000 for the Mexican fruit fly control program, \$175,000 for management and compliance, and \$100,000 for marketing and promotion. Budgeted expenses for these items in 2013-14 were \$503,000, \$200,000, and \$600,000, respectively.

The Committee reviewed and recommended 2014-15 expenditures of \$809,500, which includes decreases in the amount budgeted for the marketing program and management. The Committee considered proposed expenses and recommended decreasing the assessment rate to more closely align assessment income to the lower budget.

Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Budget and Personnel Committee and the Market Development Committee. Alternate expenditure levels were discussed by these groups, based upon the relative value of various research and promotion projects to the Texas citrus industry. The assessment rate of \$0.11 per 7/10-bushel carton or equivalent of assessable oranges and grapefruit was then determined by considering the total recommended budget in relation to the quantity of assessable oranges and grapefruit, estimated at 8.2 million 7/10-bushel

cartons for the 2014-15 fiscal period. Based on estimated shipments, the recommended assessment rate of \$0.11 should provide \$902,000 in assessment income. This is approximately \$92,500 above the anticipated expenses of \$809,500, which the Committee determined to be acceptable as any assessments collected above expenditures are to be added to reserves.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for the 2014-15 season could range between \$3.02 and \$19.22 per 7/10-bushel carton or equivalent of oranges and grapefruit. Therefore, the estimated assessment revenue for the 2014-15 fiscal period, as a percentage of total grower revenue, could range between .5 and 3.6 percent.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers.

In addition, the Committee's meeting was widely publicized throughout the Texas citrus industry and all

interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 5, 2014, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this interim rule, including the regulatory and informational impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0189 Generic Fruit Crops. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This action imposes no additional reporting or recordkeeping requirements on either small or large Texas orange and grapefruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at:

<http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide>.

Any questions about the compliance guide should be sent to Jeffrey Smutny at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give

preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2014-15 fiscal period begins on August 1, 2014, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable oranges and grapefruit handled during such fiscal period; (2) this action decreases the assessment rate for assessable oranges and grapefruit grown in Texas beginning with the 2014-15 fiscal period; (3) handlers are aware of this action which was recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 906

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 906 is amended as follows:

PART 906 - ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for 7 CFR part 906 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Section 906.235 is revised to read as follows:

§ 906.235 Assessment rate.

On and after August 1, 2014, an assessment rate of \$0.11 per 7/10-bushel carton or equivalent is established for oranges and grapefruit grown in the Lower Rio Grande Valley in Texas.

Dated: August 11, 2014.

Rex A. Barnes
Associate Administrator
Agricultural Marketing Service

Billing Code
3410-02 P

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